

Lessors are subject to a Use Tax on their cost price of tangible personal property which they use by leasing in Illinois. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

February 5, 2002

Dear Xxxxx:

This letter is in response to your letter dated October 1, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing to inform you of a problem that I experienced with refinancing my car. I had to pay taxes on the vehicle twice. I originally leased the vehicle in 10/98. I had to pay a tax on the original price. When I went to refinance the car this month I was charged tax again. I am confused since I paid tax on the original amount and then had to repay it again on the refinanced amount. I have enclosed the documents for both the original tax and the refinanced tax charges. If you could look into this, I would really appreciate it. I need to know how I was charged tax twice on the same vehicle when it wasn't titled by the state until the refinancing occurred.

For general informational purposes we have enclosed a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. Lessors, under true leases, are subjected to a Use Tax on their cost price of tangible personal property which they use for leasing in Illinois. This means lessors encounter a front-end tax rather than a tax on rental receipts. Lessees do not incur tax liability under true leases. The only exception is automobiles rented for one year or less.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased and thus incur Use Tax liability on their cost price of such property, see 86 Ill. Adm. Code 130.2010.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales subject to Retailers' Occupation Tax. Such would be the case when the agreements contain nominal purchase options at the end of the lease term. In these situations Retailers' Occupation Tax is due on all the payments received by the "lessors," and for automobiles the tax on all payments is due at the start of the lease term when the motor vehicle must be titled in Illinois.

As a technical proposition, lessors leasing automobiles for periods longer than one year under “true leases” owe Use Tax up front when they buy vehicles for such leasing purposes, and lessees incur no tax liability. Sales tax must be paid before the vehicle can be titled in Illinois. In your case, the car was titled to the lessor prior to the refinancing in September 2001. However, lessors often pass their tax liability on to lessees by means of contractual terms requiring lessees to “reimburse” them for tax expenses. Without examining your contract, we assume this is what likely occurred.

When you purchased the leased vehicle from the lessor, a transaction separate and distinct from the leasing transaction occurred. When lessors sell leased vehicles, they are retailers and incur Retailers’ Occupation Tax. The lessee, who is now the purchaser, incurs Use Tax when he buys the automobile. The lessee never incurred a tax liability during the lease period. Money paid to the lessor during the lease was simply a reimbursement, made as part of a private agreement with the lessor, for the Use Tax the lessor incurred.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department’s Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

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Enc.